IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1464 OF 1984

Syndicate Bank .. Plaintiffs

Vs.

M/s.Stretch Fibre Agency and Ors...Defendants

Mr.G.Mehta i/b Kanga & Co. for the plaintiffs

None for the defendants

CORAM : S.U.KAMDAR, J

DATED : 27TH JUNE, 2005

P.C.:

1. The present suit has been filed by the plaintiffs against the defendants for the recovery of sum of Rs.1,81,715.00 alongwith interest thereon @ 20% p.a. from 26.6.81 to 24.6.84 amounting to Rs.1,11,429.10. Thus the total claim in the present suit is Rs.2,97,144.10. Some of the material facts in the present case are briefly enumerated as under:

2. Defendant no.1 is a partnership firm and

defendant no.3, 4 and 5 are the partners of the defendant no.1. Defendant no.1 is a drawer of bills of exchange and defendant no.2 is acceptor. Suit has been filed on the basis of bills of exchange dt.12.5.81 for sum of Rs.1,81,715.00 which was executed by defendant no.1 for valuable consideration. Defendant no.2 accepted the said bills of exchange. However, on presentation the said bills of exchange was not paid by the defendant no.2 and the same was dishonoured. It is the case of the plaintiffs that defendant no.3, 4 and 5 by letter of guarantee dt.27.5.81 duly guaranted the said amount upto the limit of Rs.3.0 lacs as due and payable by the defendant no.1 to the plaintiffs herein. Plaintiffs by Advocate's notice dt.28.8.81 called upon defendant no.2 to make payment of the amount of the said bill of exchange. As no payment was made, by another letter dt.20.2.82 plaintiffs again demanded payment from defendant no.1. Defendant no.1 by letter dt.1.3.82 contended that defendant no.2 would make payment by 31.3.82. However, defendant no.2 failed to make payment. Thus, plaintiffs gave Advocates notice dt.12.4.82 both to the defendant no.1 and 2

and claimed interest @ 21.5%. Inspite of notice defendants did not make payment of the amount covered by the said Bills of exchange and therefore, the plaintiff has filed the suit for the recovery of aforesaid amount.

3. On 20.1.86 defendant no.1, 3 4 and 5 has filed written statement and has interalia contended that the said bills of exchange has not properly stamped and the same has not been cancelled. It has been further contended that the said bills of exchange was not presented and the same was noted and protested and therefore u.s.106 of the Negotiable Instrument Act, plaintiffs have committed breach of the statutory provisions and is not entitled to sue the defendant on the said bills of exchange. Plaintiffs have also denied the liability. Defendant no.3, 4 and 5 have contended that they are not liable because the said guarantee was executed in blank and thus, there is no liability to pay. On the aforesaid basis issues were framed by this court on 1.2.02 which reads as under:

"1. Whether the plaintiffs prove that they are entitled to a decree in the sum of Rs.1,85,715.10 ps. as per particulars of claim annexed as Exhibit-E to the plaint with further interest on the sum of Rs.1,11,429.10 ps. at the rate of 20% per annum from the date of filing of the suit till payment and/or realisation, as prayer for in the plaint?

2. Whether the defendants prove that the Bill of Exchange has not been properly and/or duly stamped, as alleged in para 1 of the Written Statement?

3. Whether the defendants prove that the Bill of Exchange is inadmissible in evidence, as alleged in para 1 of the Written Statement?

4. Whether the defendants prove that the plaintiffs have no cause of action as against them, as alleged in para 1 of the Written Statement?

5. Whether the defendants prove that no sufficient notice of dishonour was given to them, as alleged in para 2 of the Written Statement?

6. Whether the 1st defendant proves that it is not liable, as alleged in para 9 of the Written Statement?

7. Whether defendant nos. 3, 4 and 5 prove that they had executed the Letters of Continuing Guarantee in blank and therefore, they are not liable thereon, as alleged?

8. Whether defendant Nos.3, 4 and 5 prove that they are not liable, as alleged in para 9 of the Written Statement?

9. What order?"

4. Defendant no.2 has not filed written statement and there is a decree passed as against defendant no.2. Defendant no.1, 3, 4 and 5 have filed written statement. Plaintiffs have produced documents in the present suit as well as affidavit of evidence dt.15.6.05. Same is served. Advocate for defendant no.1, 3, 4 and 5 is not appearing in the matter inspite of various adjournments. In the light of the aforesaid, evidence of the plaintiff has gone unchallenged and thus to be treated as proved.

5. In my opinion, plaintiff has made out the case because bills of exchange has been drawn by the defendant no.1. Defendant no.1 has not disputed the execution thereof. However, they have contested the said claim merely on the ground that it is not properly stamped and that they were not protested. Plaintiff has laid evidence to show that the said bills of exchange are properly stamped and that they have presented for payment and defendant no.2 has refused to accept the aforesaid and make the payment. In view of the fact that there is no challenge to the said

documentary and oral evidence the claim of the plaintiff has to be granted. However, in so far as interest is concerned, plaintiff has claimed interest @ 20% in the particulars of claim. Plaintiffs have admitted that there is no agreement to pay interest under the bills of exchange . He is unable to show any other agreement to pay interest. In view of the same, plaintiffs will be entitled to interest u.s.80 of the Negotiable Instruments Act and plaintiffs will be entitled to interest 6% from the date of dishonour of bill of exchange and after 30.12.88 and till payment and or realisation the plaintiff will be entitled to interest @ 18% in accordance with the provisions of the Negotiable Instruments Act. Therefore, I pass decree in the following terms:

6. Defendant no.1, 3, 4 and 5 to pay principal amount of Rs.1,85,715.00 alongwith interest @ 6% from the date of dishonour of the Bills of Exchange upto 30.12.88 and @ 18% from 30.12.88 till payment and / or realisation. Defendant no.1, 3, 4 and 5 to pay cost of the suit quantified at Rs. 10,000/-. Suit decreed accordingly.